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PART IV

Section—1-A.

CENTRAL BILLS AND REPORTS OF SELECT COMMITTEES THEREON.

NOTIFICATION.

No. L.D. 2302—Legis. 3-51-42, Bangalore, dated 8th March 1952.

Ordered that the Report of the Select Committee on the Presidential and Vice-Presidential Elections Bill, 1952 (Central Bill No. 1 of 1952), published in the *Gazette of India*, Part II, Section 2, dated the 23rd February 1952, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,

Legal Remembrancer and Secretary to Government, Law Department.

GOVERNMENT OF INDIA.

MINISTRY OF LAW.

New Delhi, the 8th May 1952.

The following Report of the Select Committee on the Bill to regulate certain matters relating to or connected with elections to the offices of President and Vice-President of India, was presented to Parliament on the 15th February 1952:—

WE, the undersigned members of the Select Committee to which the Bill to regulate certain matters relating to, or connected with, elections to the offices of President and Vice-President of India was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

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2. Upon the changes proposed by us which are not formal or consequential we note below.

Clause 2.—We have inserted definitions of "elector" and "Returning Officer" for convenience of reference.

Clause 3.—We are of the opinion that the Returning Officer should be appointed by the Election Commission in consultation with the Central Government and that the Returning Officer should have his office in New Delhi. We have recast sub-clause (1) of this clause accordingly.

Clause 4.—We consider that at a Presidential election the poll should be taken on the same day throughout the States subject to provision being made in the rules for repoll or adjourned poll in a State in any unforeseen contingency. We also consider that the period between the last date for the withdrawal of candidatures and poll should not be less than fifteen days. We have accordingly proposed necessary changes in paragraph (d) of sub-clause (1) of this clause.

Clause 5.—We think that both at the Presidential election and the Vice-Presidential election the nomination paper of a candidate should be subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder, and that this provision should not be left to be prescribed by rules but should be included in the Bill itself. We have accordingly suggested an addition to clause 5 of the Bill.

Clause 6.—We do not consider the proviso to sub-clause (1) of this clause to be necessary and have accordingly omitted it.

Old Clause 7.—We think it hardly necessary to provide for the appointment of election agents in the Bill as the principal duty of an election agent is to keep accounts regarding the election and to prepare and sign the return of election expenses and we do not consider it necessary to provide for the return of election expenses in the case of a Presidential or a Vice-Presidential election. We have accordingly omitted clause 7.

Clauses 7 and 8 (old clauses 8 and 9).—We have omitted the references to the Central Government from both these clauses as being unnecessary.

Clause 13 (old clause 14).—We have omitted the definitions of "agent" and "electoral right", in view of the changes which we have proposed in the remaining provisions of the Bill.

Clause 14 (old clause 15).—We think that an election petition should not be allowed to be presented by a single elector but should be presented either by a candidate at the election or by not less than 10 electors joined together as petitioners. We also think that a period of 30 days from the date of publication of the result of the election should be prescribed in sub-clause (3) of this clause as the period within which an election petition could be presented. We have revised sub-clauses (2) and (3) of this clause accordingly.

Clause 18 (old clause 19).—We consider that the procedure prescribed in this clause should be simplified. We are of the opinion that it will suffice if the grounds for the declaration of an election to be void for corrupt practices are confined to cases where the offences of bribery and undue influence as defined in Chapter IX-A of the Indian Penal Code are committed and we do not think it necessary to refer to any other corrupt practices in this clause. We have recast this clause accordingly.

Clause 19 (old clause 20).—We have omitted sub-clause (b) of this clause as we consider that in the case of an election conducted in accordance with the system of proportional representation by means of the single transferable vote it will be difficult to give effect to the provisions of that sub-clause.

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Part IV (old clauses 22 and 23.)—We consider it quite unnecessary to apply all the provisions relating to corrupt practices and electoral offences mentioned in this Part (except in so far as provisions have been made in the new clause 22) to a Presidential or a Vice-Presidential election. We have accordingly omitted this Part.

Clause 21 (old clause 24).—We have omitted paragraph (g) of sub-clause (2) of this clause in view of the omission of old clause 7.

Clause 22 is new. We have inserted it to make provisions for the maintenance of secrecy of voting on the lines of section 128 of the Representation of the People Act, 1951.

3. The bill was published in Part II, Section 2 of the *Gazette of India* dated the 26th January, 1952.

4. We think that the Bill has not been so altered as to require circulation under rule 77 (4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

SYAMA PRASAD MOOKERJEE.
KAILAS NATH KATJU.
TEK CHAND.
K. T. SHAH.
NAZIRUDDIN AHMAD.
GOKULBHAI D. BHATT.
JOACHIM ALVA.
G. DURGABAI.
L. K. BHARATI.
B. PATTABHISITARAMAYYA.
R. VENKATARAMAN.
AMOLAKH CHAND.
B. DAS.
H. V. KAMATH.

NEW DELHI,

The 15th February, 1952.

(AS AMENDED BY THE SELECT COMMITTEE).

(Words sidelined or underlined indicate the amendments suggested by the Committee ; asterisks indicate the omissions.)

BILL NO. 1 OF 1952.

A Bill to regulate certain matters relating to or connected with elections to the offices of President and Vice-President of India.

BE it enacted by Parliament as follows :—

PART I.

PRELIMINARY.

1. Short title.—This Act may be called the Presidential and Vice-Presidential Elections Act, 1952.

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2. **Definitions.**—In this Act, unless the context otherwise requires,—

(*a*) "article" means an article of the Constitution ;

(*b*) "election" means a Presidential election or Vice-Presidential election ;

(*c*) "Election Commission" means the Election Commission appointed by the President under article 324 ;

(*d*) "elector", in relation to a Presidential election, means a member of the electoral college referred to in article 54, and in relation to a Vice-Presidential election, means a member of either House of Parliament ;

(*e*) "prescribed" means prescribed by rules made under this Act ;

(*f*) "Presidential election" means an election to fill the office of the President of India ;

(*g*) "Returning Officer" includes an Assistant Returning Officer performing any function which he is authorised to perform under sub-section (2) of section 3 ;

(*h*) "Vice-Presidential election" means an election to fill the office of the Vice-President of India.

PART II.

CONDUCT OF PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS.

3. Returning Officer and his assistants.—(1) For the purposes of each election the Election Commission shall, in consultation with the Central Government, appoint a Returning Officer who shall have his office in New Delhi and may also appoint one or more Assistant Returning Officers.

(2) Subject to rules made under this Act, every Assistant Returning Officer shall be competent to perform all or any of the functions of the Returning Officer.

4. Appointment of dates for nominations, etc.—(1) The Election Commission shall, by notification in the Official Gazette, appoint for every election—

(*a*) the last date for making nominations which shall be a date not later than the fourteenth day and not earlier than the eighth day after the date of publication of the notification under this sub-section ;

(*b*) a date for the scrutiny of nominations which shall be a date not later than the third day after the last date for making nominations ;

(*c*) the last date for the withdrawal of candidatures which shall be the third day after the date for the scrutiny of nominations ;

(*d*) the date * * on which a poll shall, if necessary, be taken, which * * * * * shall be a date not earlier than the fifteenth day after the last date for the withdrawal of candidatures.

(2) In the case of the first Presidential and Vice-Presidential elections, the notifications under sub-section (1) shall be issued as soon as may be after both Houses of Parliament have been * constituted.

(3) In the case of an election to fill a vacancy caused by the expiration of the term of office of the President or Vice-President, the notification under sub-section (1) shall be issued on, or as soon as conveniently may be after, the sixtieth day before the expiration of the term of office of the outgoing President or Vice-President, as the case may be, and the dates shall be so appointed under the said sub-section that the election will be completed at such time as will enable the President or the Vice-President thereby elected to enter upon his office on the day following the

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expiration of the term of office of the outgoing President or Vice-President, as the case may be.

(4) In the case of an election to fill a vacancy in the office of President or Vice-President occurring by reson of his death, resignation or removal or otherwise, the notification under sub-section (1) shall be issued as soon as may be after the occurrence of such vacancy.

5. Nomination of candidates.—(1) Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution.

(2) Each candidate shall be nominated by a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two electors as proposer and seconder.

* * * * *

6. Withdrawal of candidature.—(1) Any candidate may withdraw his candidature by a notice in writing in the prescribed form subscribed by him and delivered before three o'clock in the afternoon on the date fixed under clause (*c*) of sub-section (1) of section 4, to the Returning Officer either by such candidate in person or by his proposer or seconder who has been authorised in this behalf in writing by such candidate.

* * * * *

(2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(3) The Returning Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause a notice of the withdrawal to be affixed in some conspicuous place in his office.

* * * * *

7. Death of candidate before poll.—If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission * * * *, and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election:

Provided that no further nomination shall be necessary in the case of a candidate whose nomination was valid at the time of the countermanding of the poll:

Provided further that no person who has under sub-section (1) of section 6 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

8. Procedure in contested and uncontested elections.—If after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of section 6—

(*a*) there is only one candidate who has been validly nominated and has not withdrawn his candidature in the manner and within the time specified in that sub-section, the Returning Officer shall forthwith declare such candidate to be duly elected to the office of President or Vice-President, as the case may be;

(*b*) the number of candidates who have been duly nominated but have not so withdrawn their candidatures exceeds one, the Returning Officer shall forthwith publish in such form and manner as may be prescribed a list containing

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the names in alphabetical order and addresses of candidates as given in the nomination papers, together with such other particulars as may be prescribed, and a poll shall be taken;

(c) there is no candidate who has been duly nominated and has not so withdrawn his candidature, the Returning Officer shall report the fact to the Election Commission * * * * and thereafter all the proceedings in relation to the election shall be commenced afresh and for that purpose the Election Commission shall cancel the notification issued under sub-section (1) of section 4 in respect of such election and issue another notification under that sub-section appointing schu dates referred to in that sub-section for the purposes of such fresh election.

9. Manner of voting at elections.—At every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

10. Counting of votes.—At every election where a poll is taken, votes shall be counted by, or under the supervision of, the Returning Officer, and each candidate and one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting.

11. Declaration of results.—When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

12. Report of the result.—As soon as may be after the result of an election has been declared, the Returning Officer shall report the result to the Central Government and the Election Commission, and the Central Government shall cause to be published in the Official Gazette the declaration containing the name of the person elected to the office of President or Vice-President, as the case may be.

PART III.

DISPUTES REGARDING ELECTIONS.

13. Definitions.—In this Part * * * unless the context otherwise requires—

* * * *

(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;

(b) "costs" means all costs, charges and expenses of or incidental to, a trial of an election petition;

(c) "returned candidate" means a candidate whose name has been published under Section 12 as duly elected.

14. Election petitions.—(1) No election shall be called in question except by an election petition presented to the Supreme Court in accordance with the provisions of this Part and of the rules made by the Supreme Court under Article 145.

(2) An election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of Section 18 and Section 19 to the Supreme Court by any candidate at such election or by ten or more electors joined together as petitioners.

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(3) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under Section 12 but not later than thirty days from the date of such publication.

15. Form of petitions, etc., and procedure.—Subject to the provisions of this Part, rules made by the Supreme Court under Article 145 may regulate the form of election petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs.

16. Relief that may be claimed by the petitioner.—A petitioner may claim either of the following declarations:—

(*a*) that the election of the returned candidate is void;

(*b*) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

17. Orders of the Supreme Court.—(1) At the conclusion of the trial of the election petition, the Supreme Court shall make an order—

(*a*) dismissing the election petition; or

(*b*) declaring the election of the returned candidate to be void; or

(*c*) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected.

(2) At the time of making an order under sub-section (1), the Supreme Court shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

18. Grounds for declaring the election of a returned candidate to be void.—(1) If the Supreme Court is of opinion—

(*a*) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

(*b*) that the result of the election has been materially affected—

(*i*) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance, or

(*ii*) by the improper acceptance or rejection of any nomination, or

(*iii*) by the improper reception or refusal of a vote, or

(*iv*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the Supreme Court shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code (Act XLV of 1860).

19. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Supreme Court is of opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the Supreme Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

20. Transmission of orders to the Central Government and its publication.—The Supreme Court shall, after announcing the orders made under Section 17, send a copy thereof to the Central Government, and on receipt of such copy the Central Government shall forthwith cause the order to be published in the Official Gazette.

* * *

PART IV.

MISCELLANEOUS.

21. Power to make rules.—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the maintenance of a list of members of the electoral college referred to in Article 54 with their addresses corrected up to date for the purposes of Presidential elections;

(*b*) the maintenance of a list of members of both Houses of Parliament with their addresses corrected up to date for the purposes of Vice-Presidential elections;

(*c*) the powers and duties of a Returning Officer and the performance by any officer appointed to assist the Returning Officer of any function of the Returning Officer;

(*d*) the form and manner in which nominations may be made and the procedure to be followed in respect of the presentation of nomination papers;

(*e*) the scrutiny of nominations and, in particular, the manner in which such scrutiny shall be conducted and the conditions and circumstances under which any person may be present or may enter objections thereat;

(*f*) the publication of a list of valid nominations;

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(*g*) the place and hours of polling, the manner in which votes are to be given and the procedure as to voting to be followed at elections;

(*h*) the scrutiny and counting of votes including cases in which a re-count of the votes may be made before the declaration of the result of the election;

(*i*) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(*j*) any other matter required to be prescribed by this Act.

22. Maintenance of secrecy of voting.—(1) Every officer, clerk or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

23. Jurisdiction of civil courts barred.—Save as provided in Part III, no civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.